THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 22856 OF 2003

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Dated 02.12.2005

Between:

P. Krishnamacharyulu S/o Pattabhi Ramacharyulu
12-2-417/21 Sharada Nagar
Hyderabad.

..... PETITIONER

AND

The Transmission Corporation of A.P., Ltd., rep. by its Chairman & Managing Director, Vidyutsoudha, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 22856 OF 2003

O R D E R:

The present writ petition is filed to declare the proceedings in memo dated 04.06.1996, whereby the respondents decided to initiate a second enquiry against the petitioner, as illegal and contrary to Regulation 10 of the Conduct, Discipline and Appeal Regulations; to declare memo dated 04.12.2002, in imposing punishment of 15% cut in the pension permanently, as illegal and arbitrary and to declare memo dated 10.04.2003, in rejecting the appeal of the petitioner, as illegal and arbitrary.

Facts, to the extent necessary for this writ petition, are that the petitioner joined

the services of the erstwhile A.P.State Electricity Board (for short 'APSEB') in the year 1961. He was promoted as Upper Grade Stenographer and later as Special Grade Stenographer. He was promoted thereafter as Personnel Officer and later as Deputy Manager. It is his case that though he was promoted as Deputy Manager, he continued to discharge the duties of a stenographer/P.A. and worked under the Member (Accounts) of APSEB.

The petitioner was placed under suspension vide proceedings dated 29.11.1994. On his attaining the age of superannuation on 31.01.1995, proceedings dated 15.04.1995 was issued, under Rule 9(ii) of the Revised Pension Rules, 1980, informing him that he was deemed to have retired from service with effect from 31.01.1995, pending finalisation of the disciplinary proceedings instituted against him and without prejudice to disciplinary proceedings/criminal proceedings, which may be launched at a later date.

The Chairman and Managing Director (first respondent) vide memo dated 22.06.1995, appointed an enquiry officer. The Enquiry Officer, vide memo dated 11.12.1995, issued a charge sheet calling upon the petitioner to submit his explanation and the petitioner submitted his explanation on 02.01.1996, denying the allegations levelled against him. The petitioner was informed, vide letter dated 16.01.1996, that an oral enquiry would be held on 22.01.1996. On the Enquiry Officer submitting his report, the Member Secretary, vide memo dated 04.06.1996, appointed the Chief Engineer (Electrical) as an Enquiry Officer to continue the enquiry taking into consideration the report submitted earlier. It is the case of the petitioner that there is no provision for appointment of an Enquiry Officer after a report had been submitted earlier by the erstwhile Enquiry Officer and that it amounts to *de novo* enquiry. A fresh charge sheet dated 05.07.1996 was issued to which the petitioner submitted his explanation on 20.07.1996. Thereafter the petitioner was informed, vide proceedings dated 26.08.1996, to attend the oral enquiry. The petitioner would submit that an oral enquiry was conducted on 30.08.1996 and 31.08.1996. Again a charge memo dated 10.09.1996 was issued, alleging that the petitioner had abetted in manipulation of the LOAs and had abused his official position to indulge in nefarious activities. The petitioner submitted his explanation and an oral enquiry was conducted on 23.11.1996, which was concluded on 31.03.1998.

On the basis of the enquiry report dated 30.06.1998, the petitioner was issued show cause notice dated 12.04.2002 proposing to impose punishment of 15% cut in pension permanently. The petitioner submitted a detailed explanation thereto on 15.05.2002. However, final orders were passed on 04.12.2002 imposing punishment of 15% cut in pension. Against the order of punishment dated 04.12.2002, the petitioner filed an appeal on 06.06.2003, which was rejected by order dated 10.04.2003.

While several contentions are raised regarding the legality or otherwise of the enquiry proceedings before this Court, Sri K.S.Murthy, learned counsel for the petitioner, would emphasise the fact that the enquiry was conducted in violation of principles of natural justice. Learned counsel would submit that the Enquiry Officer, relied on statements given by the witnesses, who were not even present during the enquiry proceedings, their deposition was not recorded in the presence of the petitioner and they were not subjected to cross-examination by him. On the basis of these statements, the petitioner was held guilty of the charges levelled against him. Learned counsel would submit that since the entire enquiry proceedings are vitiated for violation of principles of natural justice, the order of punishment imposed by the disciplinary authority dated 04.12.2002 and the order of the appellate authority dated 10.04.2003 are liable to be set aside.

Sri N.Subba Reddy, learned Senior counsel appearing on behalf of the respondents, would submit that a massive fraud was perpetrated on the respondent Corporation in which the petitioner had played a very important part. Learned counsel would state that the Board was put to a loss of more than Rs.40 lakhs. He would submit that principles of natural justice cannot be put in a straight-jacket formula and that in cases of fraud of such magnitude, this Court should not interfere with the order of punishment on mere technicalities. Learned counsel would refer to the explanation, given by the petitioner as extracted in the enquiry report, which reads as under:

> "It is alleged in the charge sheet that I have indulged in nefarious acts and abused my official position for personnel gain and LOAs were found to have been processed and manipulations carried out at my instance while I was behind the scene and reported to have abetted the case in cheating the Board which constitute misconduct as per APSEB (Revised) conduct regulation.

> It is stated that the charge was made out on the alleged heresay evidence and deposition statement given to DSP, CID, special team, Hyderabad as well as the statements in respect of Deputy Manager Additional Assistant Engineer and Foreman reveal that I parted with crucial information to the culprits."

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Learned counsel would contend that the petitioner was the person, who had indulged in manipulation and had abetted in the fraud played on the erstwhile APSEB. Sri N.Subba Reddy, learned Senior counsel, would submit that no prejudice can be said to have been caused to the petitioner for failure to comply with principles of natural justice. I am afraid, I cannot agree.

In **STATE BANK OF PATIALA V. S.K. SHARMA**, the Supreme Court held that violation of procedural provisions should be examined from the point of view of prejudice except cases falling under 'no notice', 'no opportunity' and 'no hearing'. The grievance of the petitioner, in the present case, is one of 'no opportunity' in the sense that the petitioner was denied the opportunity of cross-examining the witnesses, whose statements were relied upon, in holding that he was guilty of the charges levelled against him.

It is well settled that except in cases where an employee has admitted his guilt, the charges are required to be established against him in a properly conducted domestic enquiry, more so, when the action proposed to be taken is for imposition of a major penalty. It is not in dispute that the charges held to be proved, in the present case, were based on the statements of witnesses, who were not even brought before the enquiry officer nor were they subjected to cross-examination. In **STATE OF MYSORE V. SHIVABASAPPA SHIVAPPA,** while dealing with the procedure to be followed by tribunals exercising quasi-judicial powers, the Supreme Court held thus:

> "……..For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions are not Courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law

casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in Courts."

"……Discussing next what those rules required it was observed that the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

"But in our opinion, the purpose of an examination in the presence of a party against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled, that statement is put to him, and made known to the opposite party, and the witness is tendered for cross-examination by that party……."

One of the basic rules of natural justice is that no statement of a witness, which has not been subjected to cross-examination, can be relied upon in holding that charges are established against the delinquent employee. While it is not necessary that the witness himself should depose in the enquiry proceedings and it would suffice if the statement given earlier is put to the witnesses in the enquiry and he acknowledges the said fact, it is however necessary that the

said witness be made available for cross-examination by the delinquent or his representative. Failure to do so, would undoubtedly result in violation of the rules of natural justice and in the enquiry being vitiated. Since the foundation of order of the disciplinary authority, dated 04.02.2002 as confirmed by the order of the appellate authority dated 10.04.2003, is the said enquiry report dated 30.06.1998, these orders are liable to be set aside for violation of principles of natural justice.

While the fact that the Board was put to loss is not in dispute, the question as to whether the petitioner was involved or the extent of the petitioner's involvement must necessarily have to be adjudged in a properly conducted enquiry. I am unable to agree with the contention of Sri N.Subba Reddy, learned Senior counsel, that violation of principles of natural justice is required to be ignored in cases of fraud since it is only in a properly conducted domestic/departmental enquiry that the charges levelled against the delinquent employee are required to be proved, that too, after compliance with principles of natural justice. The order of the disciplinary authority dated 04.12.2002 and the order of the appellate authority dated 10.04.2003 are set aside. It is however made clear that this order shall not preclude the respondents from taking such action, against the petitioner, as is available to them in law.

The writ petition is allowed. There shall however be no order as to costs.

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02.12.2005

Note:Furnish copy within ten days

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